

STEVENS & LEE
LAWYERS & CONSULTANTS

485 Madison Avenue, 20th Floor
New York, NY 10022
(212) 319-8500 Fax (212) 319-8505
www.stevenslee.com

Direct Dial: (212) 537-0403
Email: nfk@stevenslee.com
Direct Fax: (610) 371-1223

March 28, 2019

BY ELECTRONIC FILING AND HAND DELIVERY

Honorable Stuart M. Bernstein
United States Bankruptcy Judge
United States Bankruptcy Court
One Bowling Green
Room 729
New York, NY 10004

Re: Picard v. Legacy Capital Ltd., Adv. Pro. No. 10-05286 (SMB)

Dear Judge Bernstein:

We write on behalf of Defendant Legacy Capital Ltd. ("Legacy") in connection with the above-referenced adversary proceeding. On December 21, 2018, Plaintiff filed his motion for summary judgment [ECF No. 190-93], which is currently scheduled to be argued on April 9, 2019. Legacy served its responsive papers on March 1, 2019 [ECF No. 199]. Plaintiff served his reply papers on March 22, 2019 [ECF Nos. 201-02].

On March 22, 2019, the Securities Investor Protection Corporation ("SIPC") filed a reply brief [ECF No. 204]. In section II.C. of its reply brief, SIPC raises for the very first time an argument that Article 8 of the NYUCC does not support Legacy's antecedent debt argument. This issue was not raised by Plaintiff in his moving papers, or even his reply papers, neither of which mentions Article 8 or securities entitlements.

Accordingly, Legacy hereby requests that the Court strike II.C. of SIPC's reply brief. Courts "ordinarily do not consider issues raised for the first time in a reply brief." *McBride v. BIC Consumer Prods. Mfg. Co.*, 583 F.3d 92, 96 (2d Cir. 2009); *see also Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir. 1993) ("Arguments may not be made for the first time in a reply brief."); *In re Dobbs*, 227 F. App'x 63, 64 (2d Cir. June 29, 2007) (summary order) ("[I]t was entirely proper for the District Court to decline to consider [an] argument[] raised for the first time in [a]

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reply brief.”). Alternatively, Legacy should be provided an opportunity to file a sur-reply to address the new NYUCC Article 8 issues.¹

Thank you for your consideration.

Respectfully submitted,

STEVENS & LEE

Nicholas F. Kajon

NFK:mot

Cc: Plaintiff's Counsel and SIPC by email and by ECF

MEMO ENDORSED

Legacy may submit a sur-reply, limited to ten pages, in response to SIPC's discussion of UCC 8-501.

So ordered: 3/29/19

Stuart M. Bernstein
WSB

¹ Preliminarily, Legacy notes that SIPC's argument is inconsistent with *Picard v. Ida Fishman Revocable Trust (In re Bernard L. Madoff Inv. Sec., LLC)*, 773 F.3d 411 (2d Cir. 2014), which specifically recognizes a securities entitlement under Article 8 of the NYUCC.